

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT

WATER MONITORING AND STANDARDS

Surface Water Quality Standards

Proposed Readoption with Amendments: N.J.A.C. 7:9B**Proposed Amendments: N.J.A.C. 7:7A-1.4 and 7:14A-1.2 and 13**

Authorized By: Mark N. Mantiello, Acting Commissioner
Department of Environmental Protection
Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., and 13:1D-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 07-09-03-454

Proposal Number: PRN 2009-123

A public hearing concerning this notice of proposal will be held on June 4, 2009 from 3:30 P.M. to 5:00 P.M. or close of testimony, whichever occurs first, and from 6:00 P.M. to 7:00 P.M. or close of testimony, whichever occurs first, at:

Department of Environmental Protection
401 East State Street
Public Hearing Room
Trenton, NJ 08625

Submit written comments by June 19, 2009 to:

Gary J. Brower, Esq.
Attn: DEP Docket Number 07-09-03-454
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, Floor 4
P.O. Box 402
Trenton, NJ 08625-0402

The New Jersey Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD, as well as paper. Submittals on disk or CD must not be access-restricted (locked or read only) in order to facilitate use by the Department of the electronically submitted comments. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above, Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, the commenter's name and affiliation following the comment.

Copies of this rule proposal can be downloaded electronically from the Department's web page at <http://www.state.nj.us/dep/rules>.

The agency proposal follows:

Summary

The Department is proposing to readopt the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B with amendments. As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 17:26-3.3(a)(5).

The Department administers the SWQS for the protection of high quality water and to restore impaired waters. The Department develops and administers the SWQS pursuant to the Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The SWQS are further developed and administered in conformance with requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., commonly known as the Clean Water Act (CWA), and the Federal regulatory program established by the United States Environmental Protection Agency (USEPA) at 40 C.F.R. Part 131. The SWQS include general requirements, use designations, classifications, antidegradation categories and water quality criteria applicable to the surface waters of the State. The SWQS are established to address the Department's responsibilities to conduct a

continuous planning process pursuant to Section 303 of the CWA, 33 U.S.C. §1313, and the WQPA, N.J.S.A. 58:11A-1 et seq. The SWQS establish the designated uses to be achieved for individual waterbodies and specify the water quality criteria necessary to achieve those uses. Designated uses include drinking water, propagation of fish and wildlife, recreation, agricultural and industrial supplies and navigation. As part of this process, the Department establishes stream classifications and an antidegradation designation for each waterbody. Changes to the stream classification, designated uses, water quality criteria and antidegradation designation are accomplished through rulemaking.

The SWQS are utilized by New Jersey Pollutant Discharge Elimination System (NJPDDES) (N.J.A.C. 7:14A) surface water discharge permitting program in the development of water quality-based effluent limitations (WQBEL) to protect or improve existing water quality and designated uses. They are also utilized by the Department's Site Remediation Program (N.J.A.C. 7:26) to ensure discharges flowing to surface water comply with the SWQS. The Land Use Regulation Program, through the Freshwater Wetlands Program (N.J.A.C. 7:7A), the Coastal Permitting Program (N.J.A.C. 7:71) and the Flood Hazard Area Control Act Program (N.J.A.C. 7:13), also utilizes the SWQS to establish permit requirements.

The Department readopted the SWQS on May 18, 1998 (30 N.J.R. 1778(a)) with a chapter expiration date of April 18, 2003. Since 1998, the Department completed seven rounds of rulemaking primarily to upgrade stream classification antidegradation designations. In 2006 (see 38 N.J.R. 4419(a), October 16, 2006) the Department updated toxics criteria for aquatic life and human health protection: temperature, ammonia, mixing zones and pathogens. The rules were scheduled to expire on March 19, 2009. In accordance with N.J.S.A. 52:11B-5.1c, the expiration date has been extended to September 15, 2009 as a result of the filing this notice of proposal to readopt the rules with amendments, with the Office of Administrative Law.

The Department is proposing several amendments as part of this readoption. Revisions to the nutrient policies and phosphorus criteria, inclusion of a new range of pH criteria applicable to southern coastal waters and new stream classification table for waters subject to the new pH criteria, revised temperature criteria and an updated cyanide criterion are being proposed at this time. Other proposed amendments included a new policy on outaging reclaimed water for beneficial uses, a proposal to use the Integrated Water Quality Monitoring and Assessment Methods to identify impaired waters and a procedure to update certain criteria through notice in the New Jersey Register.

The following is a summary of the existing rules at N.J.A.C. 7:9B proposed for readoption and of the proposed amendments:

N.J.A.C. 7:9B-1.1, Scope of subchapter, sets forth the scope of N.J.A.C. 7:9B with respect to the protection and enhancement of the surface water resources of the State of New Jersey. The Department is proposing to readopt this section without change.

N.J.A.C. 7:9B-1.2, Construction, states that the chapter shall be liberally construed to permit the Department and its various divisions to discharge their statutory functions. The Department is proposing to readopt this section without change.

N.J.A.C. 7:9B-1.3, Severability, states that if any portion of the SWQS is found to be invalid, the remainder of the chapter shall not be affected. The Department is proposing to readopt this section without change.

N.J.A.C. 7:9B-1.4, Definitions, contains definitions of terms used in this chapter. A description of the proposed changes to the section follows:

The designated uses and criteria applicable to the mainstem of the Delaware River are governed by the Delaware River Basin Commission water quality regulations (see N.J.A.C. 7:9B-1.13(a) and 1.14(h)). The Department is proposing a new definition of the term "DRBC Water Quality Regulations" which means the DRBC Administrative Manual, Part III Water Quality Regulations dated September 27, 2006 including all amendments and supplements thereto, to refer to the same regulations currently cited at N.J.A.C. 7:9B-1.13(a) and 1.14(h). The definition will be updated, if necessary, in the future rather than updating all the references in the existing rule regarding the DRBC regulations. The title of the DRBC rule at N.J.A.C. 7:9B-1.13 and 1.14(h) are proposed to be replaced with the term "DRBC Water Quality Regulations."

["Bioconcentration" means the net accumulation of a substance as an aquatic organism, as a result of uptake directly from the ambient water through the gill membrane or other external body surfaces.]

["Category One waters" means those waters designated in the tables in N.J.A.C. 7:9B-1.1(c) through 1.1(f), for purposes of implementing the integrated policies set forth in N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality based on exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources to protect their aesthetic value (color, clarity, scenic setting) and economical integrity (habitat, water quality), and biological functions.]

"BRIE Water Quality Regulations" means the BRIE Administrative Manual—Part III Water Quality Regulations dated September 27, 2006, including all amendments and supplements thereto.

["Flow-through bioassay" means a toxicity test in which the test solutions flow into and out of the test chamber on a once-through basis for the duration of the test, in accordance with N.J.A.C. 7:2A-1.1.]

"FWT" means those fresh waters, as designated in N.J.A.C. 7:9B-1.14(h) Table g), Table g)(1), that are to be maintained in their natural state or quality (as applicable for posterity) and not subjected to any man-made wastewater discharges or increases in runoff from anthropogenic activities. These waters are set aside for posterity because of their clarity, color, scenic setting, other characteristics of aesthetic value, unique ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.)

["Limning nutrient" means a nutrient whose absence or scarcity exerts a restraining influence upon an aquatic biota (a population).]

"Nonpoint waters" means fresh waters that have not been designated in N.J.A.C. 7:9B-1.15(c) through 1.15(f) (1) as trout production or trout maintenance. These waters are generally not suitable for trout because of their physical, chemical, or biological characteristics, but are suitable for a wide variety of other fish species.

"Pinelands waters" means all waters within the boundaries of the Pinelands Area, except those waters designated as FWI in N.J.A.C. 7:9B-1.15(h) Table g)(1), Table g)(2), as established in the Pinelands Protection Act (N.J.A.C. 15:18A-1 et seq.) and shown on Plate 1 of the Comprehensive Management Plan adopted by the New Jersey Pinelands Commission in November 1980.

"Shellfish waters" means waters classified as Approved, Seasonally Approved, Special Restricted, Seasonally Special Restricted or Conditioned that support or possess the potential to support shellfish which are within the Coastal Area Facility Review Act (CAFRA) zone as delineated in 1971, excluding 1. The 100-year River upstream of Brown's Run, 2. The Maurice River upstream of Route 518, 3. The Great Egg Harbor River upstream of Fossil Creek, 4. The Lackawanna River upstream of Route 50, 5. The Mullica River upstream of the Garden State Parkway plus the adjacent areas between Route 55 (from its junction with the CAFRA zone just north of Red Bank) to its junction with the CAFRA zone just south of Keyport and the CAFRA zone and the area from the shore of the Karkan River, then easterly along Route 55 to the northern shore of the Karkan River, then easterly along the northern shore of the Karkan River to the southeast point of Perth Amboy, then due east to the New Jersey jurisdiction limit and seaward along the jurisdiction limit to the Atlantic Ocean) in accordance with the Shellfish Growing Water Classification rules N.J.A.C. 7:12.

"Site-specific criteria" means an alternative criterion established, at N.J.A.C. 7:9B-1.14(g), in place of an existing statewide criterion, to protect existing or designated uses for specified waterbodies.)

Surface water classification means names assigned by the Department as set forth in N.J.A.C. 7:9B-1.15(c) through 1.15(f).

utilized to achieve water quality goals to allow the regulated community to know compliance measures that reduce economic impacts while ensuring that the State's waters are protected. Therefore, the Department believes there is an extreme unlikelihood that the rules proposed for readoption within Planning Areas 1 or 2 or within Designated Centers.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:9B.

Full text of the proposed amendments follows (additions indicated in red and deletions indicated in bracket, (bds)).

CHAPTER 2A DESIGNATED WATERS PROTECTION ACT RULES

THE CHAPTER GENERAL INFORMATION

"A 1.1. Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:
Additional definitions specifically applicable to N.J.A.C. 7:2A-1.5 Modification are set forth in N.J.A.C. 7:2A-1.5.1

"Category One waters" means waters designated as Category One waters [such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B-1.14, 7:9B-1.15, 7:9B-1.16, 7:9B-1.17, 7:9B-1.18, 7:9B-1.19, 7:9B-1.20, 7:9B-1.21, 7:9B-1.22, 7:9B-1.23, 7:9B-1.24, 7:9B-1.25, 7:9B-1.26, 7:9B-1.27, 7:9B-1.28, 7:9B-1.29, 7:9B-1.30, 7:9B-1.31, 7:9B-1.32, 7:9B-1.33, 7:9B-1.34, 7:9B-1.35, 7:9B-1.36, 7:9B-1.37, 7:9B-1.38, 7:9B-1.39, 7:9B-1.40, 7:9B-1.41, 7:9B-1.42, 7:9B-1.43, 7:9B-1.44, 7:9B-1.45, 7:9B-1.46, 7:9B-1.47, 7:9B-1.48, 7:9B-1.49, 7:9B-1.50, 7:9B-1.51, 7:9B-1.52, 7:9B-1.53, 7:9B-1.54, 7:9B-1.55, 7:9B-1.56, 7:9B-1.57, 7:9B-1.58, 7:9B-1.59, 7:9B-1.60, 7:9B-1.61, 7:9B-1.62, 7:9B-1.63, 7:9B-1.64, 7:9B-1.65, 7:9B-1.66, 7:9B-1.67, 7:9B-1.68, 7:9B-1.69, 7:9B-1.70, 7:9B-1.71, 7:9B-1.72, 7:9B-1.73, 7:9B-1.74, 7:9B-1.75, 7:9B-1.76, 7:9B-1.77, 7:9B-1.78, 7:9B-1.79, 7:9B-1.80, 7:9B-1.81, 7:9B-1.82, 7:9B-1.83, 7:9B-1.84, 7:9B-1.85, 7:9B-1.86, 7:9B-1.87, 7:9B-1.88, 7:9B-1.89, 7:9B-1.90, 7:9B-1.91, 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applied to the system. The system is then evaluated against the criteria and the results are compared with the results of the previous evaluation. The system is then revised and the process is repeated until the system is satisfactory.

regulations, the criteria set forth above are the applicable criteria and shall be applied as follows:

7. (Inquiries to the nearest Delaware River and Delaware Bay)

regulations, in the future, to supplement the public water quality standards in the protection of the public health, where criteria are established in the Federal Water Pollution Administration Manual - Part III: Water Quality Regulations.¹ Article 3, Federal Executive

ERCB Water Quality Regulations, or as above, the Department is providing all amendments and future supplements in the form of a separate document, as shown above, and not in accordance with the above and N.A.C. 107-1-1, in establishing the quality-based effluent limitations.

[illegible]

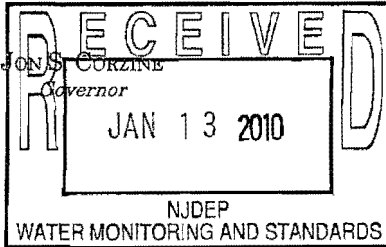
1. Wet water: by tract within basins and subsection (c) identifies
 2. (a) including National Resource Waters of the State Interstate
 3. cities of the mainland Delaware River are under the jurisdiction of
 4. the DEPRM and designations are contained in the DEPRM Water
 5. quality Regulations
 6. (b) The following are institutions for the use of lakes through

found in the NFAV-1984-1500 through 1991. (F) below, respectively.

ated. The major drainage basins are: The Atlantic coastal drainage basin, which contains the surface water basins of the Chesapeake Bay, Potomac River, Delaware River, and New York Harbor; the Delaware River drainage basin, which contains the surface water basins of the Delaware River, Rappahannock River, and York Harbor; and the James River drainage basin, which contains the surface water basins of the James River, York River, and Pamlico River.

ANNALS OF THE ENTOMOLOGICAL SOCIETY OF AMERICA

[This paper is part of a Special Issue entitled "The Biology of the Fruit Flies (*Drosophila*)".]]



State of New Jersey
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ANNE MILGRAM
Attorney General

TAYSEN VAN ITALLIE
Director

January 11, 2010

Leslie J. McGeorge, Administrator
 Water Monitoring and Standards
 New Jersey Department of Environmental Protection
 401 East State Street, Floor 2 West
 P.O. Box 409
 Trenton, New Jersey 08625

Re: New Jersey Water Surface Quality Standards
 Re-adoption with Amendments

Dear Ms. McGeorge:

Pursuant to 40 C.F.R. 131.6(e), I hereby certify that the amendments to the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B, published at 41 N.J.R. 4735(a) (December 21, 2009), were duly adopted in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rulemaking procedures at N.J.A.C. 1:30. The amendments were, therefore, duly adopted pursuant to State law.

Sincerely yours,

ANNE MILGRAM
 ATTORNEY GENERAL OF NEW JERSEY

By:

Jane F. Engel

Jane F. Engel
 Deputy Attorney General

JFE:mcp
 c: John Covino, SDAG





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAY 21 2010

Ms. Leslie J. McGeorge, Administrator
Water Monitoring and Standards
New Jersey Department of Environmental Protection
401 East State Street, Floor 2 West
P.O. Box 409
Trenton, New Jersey 08625-0409

Leslie
Dear Ms. McGeorge:

The U.S. Environmental Protection Agency (EPA) has completed its review of the revisions to the New Jersey Surface Water Quality Standards (NJSWQS) dated November 16, 2009. N.J.A.C. 7:9B. These revisions were adopted by the New Jersey Department of Environmental Protection (NJDEP) on November 13, 2009 and became fully effective on December 21, 2009. They were submitted to EPA on March 30, 2010. The submission was accompanied by a letter, dated January 11, 2010 from New Jersey Deputy Attorney General Jane F. Engel, which certified that the 2010 revisions had been adopted in accordance with New Jersey law. In taking this action, EPA considered the following documents submitted in connection with the revised NJSWQS:

1. the letter from the New Jersey Deputy Attorney General Jane F. Engel, certifying that the standards were duly adopted pursuant to New Jersey law (dated January 11, 2010); and.
2. the applicable notices from the New Jersey Register (dated April 20, 2009 and December 21, 2009).

Under Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), states are required to conduct a triennial review of their water quality standards and submit any new or revised standards to EPA for review. Federal regulations at 40 C.F.R. §§ 131.20-131.22 implement these requirements. New Jersey's previous review and revision of its water quality standards were adopted and became effective on October 16, 2006. As part of the review process on the 2009 revisions, NJDEP held a public hearing on June 4, 2009 to receive public input and comment on the proposed revisions to the NJSWQS. EPA considers the adoption of the 2009 revisions to the NJSWQS, along with the public review and comment process, to constitute the State's triennial review of water quality standards. Based on our review, NJDEP's procedures are consistent with, and satisfy the procedural requirements of 40 C.F.R. § 131.20.

The following constitute the revisions which are being addressed under this action. These revisions enhance the NJSWQS, and represent improvements in the NJSWQS. The revisions are separated into three categories based upon the applicable EPA action.

I. Revisions which are Approved Pursuant to Section 303(c) of the CWA

- inclusion of three new definitions for "DRBC Regulations," "Site-specific criteria," and "watershed-specific translators;" modification of the definitions for "shellfish waters," "Best management practices," "Category 1 waters," "FWI," "Non-trout waters," "Pineland waters," "Surface water classifications," "Trout maintenance waters," and "Trout production waters;" and the deletion of the definitions for "Ambient temperature," "Anadromous fish," "Bioconcentration," "Flow-through bioassay," "Thermocline," and "Limiting Nutrient," (7:9B-1.4), which are approved as being consistent with the requirements under 40 C.F.R. § 131.3;
- the addition of a new provision which states that, "When the Department promulgates a new or revised Maximum Contaminant Level (MCL) in the Safe Drinking Water Act rules at N.J.A.C. 7:10 for a parameter for which there is an established human health based criterion at N.J.A.C. 7:9B-1.14(f)7, the Department shall modify the human health based criterion based on the toxicity factor used to establish the MCL and shall incorporate the modified criterion into N.J.A.C. 7:9B-1.14(f)7. The Department shall publish a notice of administrative change in the New Jersey Register." (7:9B-1.5(c)(6)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.11(a);
- revisions to the antidegradation policies to further clarify and update the existing policy, including the addition of a provision which states that "The maintenance migration, and, as appropriate propagation of threatened or endangered species is considered an existing use that must be maintained." (7:9B-1.5(d)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.12;
- revisions to the nutrient policies to: clarify that except as due to natural conditions, nutrients shall not be allowed in concentrations that render the waters unsuitable for the existing or designated uses due to objectionable algal densities, nuisance aquatic vegetation, abnormal diurnal fluctuations in dissolved oxygen or pH, changes to the composition of aquatic ecosystems, or other indicators of use impairment caused by nutrients; and, allow NJDEP to develop watershed-specific translators or site-specific criteria through a TMDL and incorporate the resultant site-specific criteria at N.J.A.C. 7:9B-1.14(g), (7:9B-1.5(g)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1) and (b);
- revision to the mixing zone policy to include e-coli as a pathogen indicator for which mixing zones are prohibited (7:9B-1.5(h)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.13;

- the addition of a provision to allow NJDEP to authorize compliance schedules in accordance with individual NJPDES permits to allow permittees time to comply with new effluent limitations, (7:9B-1.6(d)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.13;
- deletion of the "secondary contact recreation" use from the designated uses of FW-1, PL, FW-2, SE-1 and SC waters, since these use designations require compliance with the primary contact recreation use and criteria to support this use, (7:9B-1.12), which is approved as being consistent with the requirements under 40 C.F.R. § 131.10;
- revision of the complete citation of the Delaware River Basin Commission (DRBC) rules with the term "DRBC water quality regulations" which are now defined in 7:B-1.4, and a correction with a cross reference in the rules, (7:9B-1.13(a)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10 and 131.11; and,
- the addition of a provision which states that, "Any site-specific criterion developed through a TMDL adopted as an amendment to the Statewide Water Quality Management Plan or the applicable Area wide Water Quality Management Plan in accordance with N.J.A.C. 7:15-6.4 shall be incorporated into this section. The Department shall publish a notice of administrative change in the New Jersey Register." (7:9B-1.14(g)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11.

By this letter, I am pleased to approve the above revisions to the NJSWQS pursuant to Section 303(c) of the CWA. With regard to the provision which authorizes the development of site-specific criteria through a Total Maximum Daily Load (TMDL) (7:9B-1.14(g)), it must be understood that the resultant site-specific criteria must be submitted to EPA for review and approval and must include the requisite Attorney General certification, since the TMDL must be based on an EPA-approved water quality standard. Further, in order to ensure that the TMDL is based on an EPA-approved water quality standard, the resultant site-specific criteria must first be adopted by the State as an amendment to the Statewide Water Quality Management Plan or the applicable Area wide Water Quality Management Plan before the TMDL is finalized and adopted by the State through the same process. By separating the adoption of the site-specific criteria and the TMDL into two separate and distinct actions, it will allow NJDEP and EPA to address any potential revisions to the TMDL that may result from EPA's final review of the TMDL.

Whereas the adoption of the site-specific criteria and TMDL concurrently through the Statewide Water Quality Management Planning process, while representing a more streamlined approach, does not provide an effective mechanism to address the potential need for revisions to the TMDL based upon EPA review.

II. Revisions which are Approved Subject to the Results of Consultation under Section 7(a)(2) of the Endangered Species Act

In addition, I am approving the following revisions, subject to the results of consultation under section 7(a)(2) of the Endangered Species Act:

- revision to the statement of policy on the implementation of temperature criteria to reflect a more accurate value for the allowable increase in stream temperature for FW2-TM waters (from 1.1°C to 1.2 °C) caused by a discharge without exceeding the temperature criteria at N.J.A.C. 7:9B-1.14(d)11, (7:9B-1.5(c)(8)i.2), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1);
- deletion of the criteria for petroleum hydrocarbons based upon updates to the EPA national program, (7:9B-1.14(d)3ii), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1);
- revision of the State's pH criteria to include a pH range of 4.5 – 7.5 for coastal plain FW-2 waters outside of the Pinelands boundary, (7:9B-1.14(d)4), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1);
- revision to the current temperature criteria for TP, TM and NT waters with acute criteria (based on a daily maximum) to protect against fish lethality and chronic criteria (based on a seven day rolling average) to protect fish against sub-lethal effects, (7:9B-1.14(d)11), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1);
- revision to the current marine aquatic life cyanide acute and chronic criteria based upon additional updated toxicity information, (7:9B-1.14(f)7), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(2);
- reclassification of four stream segments based on trout sampling data, (7:9B-1.15), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10; and,
- editorial changes/amendments to the surface water classifications for the waters of the State of New Jersey to reflect recodifications to: clarify that the waters of the mainstream Delaware River are under the jurisdiction of DRBC; and, split the existing Delaware and Raritan River basins into upper and lower basins to accommodate the pH criteria changes for coastal plain FW-2 waters outside of the Pinelands boundary; and reclassify several FW2/SE waters to FW2 based on stream biology, (7:9B-1.15), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10.

EPA initiated consultation with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries (Services) on these provisions on April 29, 2010, under Section 7(a)(2) of the Endangered Species Act. Section 7(a)(2) requires that federal agencies, in consultation with the Services, insure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. Upon completion of consultation with the Services, EPA will notify NJDEP of the results.

III. Revisions which EPA is not Taking Action on Pursuant to Section 303(c) of the CWA

Finally, please note that EPA is not taking action pursuant to Section 303(c) of the CWA on the following revisions, since these provisions relate to requirements associated with other areas of the water program, including permitting and assessment, rather than elements of Section 303(c) of the CWA relating to water quality standards.

- the addition of a policy statement stating that, "The Department encourages the use of reclaimed water for beneficial reuse to help preserve the highest quality water and reduce the export of freshwater out of basins in support of meeting water supply needs and natural resource protection." (7:9B-1.5(a)(8));
- the addition of a policy statement stating that, "The Department uses the Integrated Water Quality Monitoring and Assessment Methods developed pursuant to N.J.A.C. 7:15-6.2 to evaluate water quality data and identify waters where water quality does not meet the Surface Water Quality Standards at N.J.A.C. 7:9B as required by Section 303(d) and 305(b) of the Federal Clean Water Act." (7:9B-1.5(a)(9));
- the deletion of the metals translators and recodification to the NJPDES rules at N.J.A.C. 7:14A-13.6(c);
- deletion of the WET policies and recodification to the NJPDES rules at N.J.A.C. 7:14 (7:9B-1.5(f));
- revisions to the nutrient policies to allow NJDEP to establish water quality-based effluent limits for nutrients, in addition to or more stringent than the effluent standard in N.J.A.C. 7:14A-12.7, as necessary to meet a wasteload allocation established through a TMDL, or to meet the criteria at N.J.A.C. 7:9B-1.14(d)5. (7:9B-1.5(g)(4)); and,
- revisions to the provisions addressing the establishment of Water Quality-Based Effluent Limits (WQBELs) to: require that WQBELs be established for NJPDES point sources in accordance with N.J.A.C. 7:14A; require that new and/or expanded NJPDES point sources comply with the antidegradation policies at N.J.A.C. 7:9B-1.5(d). (7:9B-1.6).

EPA Region 2 looks forward to continuing to work with NJDEP to further improve the NJSWQS. If you have any questions, please call me at (212) 637-3725 or have your staff contact Mr. Jeffrey F. Gratz, Chief, CleanWater Regulatory Branch at (212) 637-3873.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Finazzo', written over a horizontal line.

Barbara A. Finazzo, Director
Division of Environmental Planning and Protection

cc: Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment,
New Jersey Department of Environmental Protection